

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Doc No 76-1216

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P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

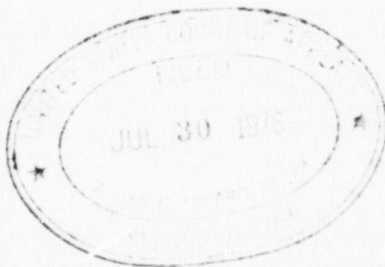
Plaintiff-Appellees

-vs-

JOSEPH CAMPANA,

Defendant-Appellant

APPENDIX ON APPEAL



APPENDIX

APPENDIX:

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sedes # Cr-1973-300
 CRIMINAL DOCKET
 UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

ATTORNEYS

TITLE OF CASE
 THE UNITED STATES

For U. S.:

US.
 JOSEPH CAMPANA

Roger Williams, Esq.
 Assistant U.S. Atty.
 Rm. 502 U.S. Courthouse
 Buffalo, New York 14202
 Tel. No. (716) 432-3638

For Defendant:

Jeffrey Sellers, Esq.
 615 Brisbane Building
 Buffalo, New York 14203
 Tel. No. (716) 854-6495

Conspiracy to commit offenses against the United States, by making certain counterfeited obligations of the United States with the intent to defraud, and by transferring and delivering certain counterfeit obligations of the U.S. with the intent that the same be used as true and genuine (Ct. 1), in vio. of Title 18, U.S.C., Section 371; did willfully and knowingly receive Approx. \$80,000 in false and counterfeit obligations of the U.S., with the intent that the same be used as true and genuine Federal Reserve Notes, (Ct. 2), in viol of Title 18, U.S.C., Section 473

Offenses: 12/1970 - 6/1972	STATISTICAL RECORD	COSTS	2 Cts.	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed		Clerk					
J.S. 3 mailed		Marshal					
Violation		Docket fee					
Title 18							
Sec. 371, 473							

PROCEEDINGS

DATE	1974	
Nov. 14	Filed Indictment	
Nov. 14	J.S. 2 made	
Nov. 25	Deft, present with counsel, enters a plea of not guilty to the indictment. Adj. to 12/23/74 for the filing of motions.	
Dec. 19	Filed Deft's notice of motion for Brady material, bill of particulars, hearing, delivery of Grand Jury minutes, discovery & inspection dismissal, and etc., ret. 12/23/1974	
Dec. 23	Court directs Govt. to file answer to motions by 1/20/75 and deft. has to 2/3/75 for response to answers	
Dec. 23	Filed Ct. Steno's transcript of the proceedings held before Judge MacMahon, on Nov. 13, 1974, at Buffalo, N.Y.	
1975		
Jan. 15	Filed Government's response to certain pre-trial motions filed by the defendant, Joseph Campana	
Jan 20	Return date for Govt's answer to deft's motion. Govt. has responded. Adj. to 2/3 for oral argument on the motion	
Feb 3	Govt' has filed a bill of particulars. Adj. to 2/24 for deft's reply	

DATE 1975	PROCEEDINGS
Feb. 10	Filed letter dated 1/30/1975 from Atty. Jeffrey Sellers, to the Court, requesting continuance of an additional three weeks to prepare response to the information received from the United States Attorney's Office
Feb 21	Filed deft's memorandum of law (failure to comply with demand for Bill of Particulars and Court Orders to furnish Bill of Particulars)
X Feb 24	Deft's reply to Govt Bill of Particulars. Adj. to 3/10 for Govt repl
Mar. 5	Filed Govt's memorandum
Mar. 10	Govt's response due. Response has been filed.
Mar. 13	Filed Order that this matter is referred to the Magistrate for decision and order. If there are other pending motions not resolved or not answered by the Government, the defendant is to call these matters to the attention of the Magistrate. Counsel shall meet at the direction of the Magistrate---CURTIN, J.
Apr. 16	Proceedings before the Magistrate - Argument on deft's motion for Bill of Particulars and for dismissal. Discovery is complete. Decision reserved on the question of dismissal
Apr. 30	Filed Govt's motion to move action for trial.
May 6	Filed Govt's memorandum
June 16	Set date for trial. Adj. to 6/18 at 9:00 a.m.
June 18	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX Pre-trial conference held in the above case and -----case No. Cr-1973-300. Motion by the defendant to dismiss the Indictments in both cases. Decision reserved.
June 25	Filed Copy of Govt's memorandum -(Original-----filed on on May 6, 1975)
Aug. 8	Filed Decision and Order - that defendant's motion to dismiss the Indictment on the grounds urged is denied; In the alternative, the motion to file a more detailed Bill of Particulars is also denied.--CURTIN, J.
Sept. 15	Set trial date. Court orders case placed on trial calendar.
Dec. 2	Status Report. No appearance for deft. Court orders case placed on the ready trial calendar.
1976	
Mar. 22	Govt. moves case to trial before Judge Curtin, at Buffalo, New York, whereupon the jury is duly impanelled; Trial is adj. until tomorrow.
Mar. 23	Trial continues from yesterday with the same appearances and jury; trial is adj. until tomorrow.
Mar. 24	Trial continues from yesterday with the same appearances and jury; Motion by deft. to dismiss the indictment. Decision reserved Trial is adj. until tomorrow.
Mar. 25	Trial continues from yesterday with the same appearances and jury-- The jury retires to deliberate upon their verdict. The jury jury returns with the following verdict: Guilty on Count One of the Indictment; Jury cannot agree on a verdict on Count Two of the indictment. Jury is discharged by the Court. Sentence is deferred until 4/26/76
Apr. 2	Filed Deft.'s notice of motion for judgment of acquittal, ret. 4/26/76 at 2:00 P.M.
Apr. 7	Filed Deft's memorandum of Law in support of motion for Judgment of Acquittal
Apr. 9	Filed Govt's affidavit in Opposition to deft's motion for Judgment of Acquittal

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
1976			
Apr. 26	Motion to dismiss the Indictment and for a judgment of acquittal. Deft. present with counsel. Adj. 4/29/76		
Apr. 29	Motion to dismiss denied. Defendant is sentenced as follows: Deft. is sentenced pur. to T.18, Sect. 3651; deft. is sentenced to a period of 1½ Yrs. He shall be confined to a jail type institution for a period not to exceed Six (6) Months. Execution of the remainder of the sentence is suspended and and the defendant is placed on probation for a period of Two (2) Years following the 6 month jail sentence. Count Two of the Indictment is dismissed. Court appoints Mr. Sellers as atty. for the deft.--CURTIN, J.		
Apr. 29	Filed Deft's Notice of appeal		
May 3	Filed Deft's \$5,000 personal recognizance bond on appeal		
May 5	Filed Judgment and commitment. commitment issued.		
May 6	Copy of notice of appeal mailed to CCA, U.S. Attorney along with docket entires. /for court Steno.		
May 13	Filed copy 5 CJA 21. copy 4 to Adm. office		
May 17	Filed cy. of scheduling order from the CCA - that the record be filed on or before 6/21/76		
June 3	Filed Ct. Stenographer's transcript of the proceedings before Judge and Jury, commencing on March 22, 1976(1 Volume)		

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK

3 -----
4 UNITED STATES OF AMERICA

5 - vs -

Cr. 1973-300

6 JOSEPH CAMPANA,

7 Defendant.
8 -----

9 Proceedings in the above entitled action held before
10 the HON. LLOYD F. MacMAHON, United States District Judge,
11 on November 13, 1974, at Buffalo, New York.

12 APPEARANCES:

13 JOHN T. ELFVIN, ESQ.,
14 United States Attorney, by
15 ROGER P. WILLIAMS, ESQ.,
16 Ass't. United States Attorney,
17 Appearing on behalf of the Government.

18 JEFFREY A. SELLERS, ESQ.,
19 Appearing on behalf of the Defendant.

20 * * * * *

1 THE COURT:

Good morning.

2 CLERK:

Criminal case 1973-300, United States
3 versus Joseph Campana.

4 MR. WILLIAMS:

Your Honor, the Government is ready.]

5 I do have one request, and that is to
6 make a brief motion prior to jury
7 selection.

8 MR. SELLERS:

9 Your Honor, I guess it could be said
10 that the defense is ready, but in actual
11 fact, we are not. As the Court is well
12 aware, I brought a motion, served papers
13 and they were filed with the Court by
14 three o'clock yesterday, pursuant to
15 a consent from Judge Curtin, indicating
16 to the Court that my request for a
17 bill of particulars had never been
18 complied with by the United States
19 Attorney's office. There have been
20 numerous attempts to comply with those
21 requests, however, compliance has not
22 been had. The brief which I drew, the
23 memorandum, I had been anticipating was
24 going to be before Judge Curtin. Since
25 I knew I had been placed on this Court's
trial calendar, the Court was aware I

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was sick the day of calendar call, my partner, Mr. Sanford Silverberg --

THE COURT: I didn't know whether you were sick or well or dead. I never saw you before this moment or heard of you.

MR. SELLERS: Okay. Which is why this does not go into great detail, but I can be very brief and tell the Court why I do not feel that I have had compliance with the demand for a bill of particulars. There was an order -- I made a motion, an omnibus motion, returnable September 24, 1973, where I had requested discover and a bill of particulars, listing Items A through W. The Government asked for two weeks to reply --

THE COURT: Isn't that what you set forth in your written motion and I denied it?

MR. SELLERS: May I make one statement --

THE COURT: I read your papers.

MR. SELLERS: There was one thing that was not in the papers, which I wish to advise this Court of.

THE COURT: All right.

MR. SELLERS: And that is a decision of Judge Curtin

1 on July 2, 1974, it is a decision-order
2 THE COURT: That was in your papers.
3 MR. SELLERS: No, it isn't. In the decision the
4 Judge indicates that the grand jury
5 minutes, which I was given as part of
6 my bill of particulars, was vague as
7 to dates. He ordered the United States
8 Attorney's office to provide further
9 specificity as to the crime. On July
10 3rd I received a bill of particulars
11 from the United States Attorney's office
12 indicating that the place of the occur-
13 rence of these acts, sometime in June,
14 between January and June, and sometime
15 in February, were at 2222 Elmwood Avenue,
16 Buffalo, New York. Now, that information
17 had been supplied to me in the grand
18 jury minutes --
19 THE COURT: My concern is why do you wait until
20 the eve of trial to bring this up.
21 MR. SELLERS: I haven't waited until the eve of trial
22 to bring it up.
23 THE COURT: Here is something you say last July the
24 Judge ordered, and here this case has
25 been put on this calendar by Judge Curtis

1 not for me. Just a moment, please.
2 What is Judge Curtin doing now?
3 CLERK: He is having a trial over there.
4 THE COURT: Is it going?
5 CLERK: Yes. Here is a copy of the docket
6 sheet.
7 MR. SELLERS: I would indicate to the Court, and I
8 believe the Court believes that I am
9 delaying in this matter, the bill of
10 particulars that I served on September
11 24th --
12 THE COURT: This is ridiculous. What does he want
13 that you haven't given him?
14 MR. SELLERS: I want to know what date my client did
15 something, what the substance of what
16 he said is --
17 MR. WILLIAMS: He wants precise days and times when
18 overt acts took place. In all the
19 discussions with my witnesses -- this
20 is a conspiracy.
21 THE COURT: What did the Judge rule with respect
22 to that? All I'm concerned with is
23 whether he has carried out Judge Curtin's
24 order. It is not a question of whether
25 I would order it or wouldn't. The

1 question is whether he has complied
2 with the Court order.

3 MR. WILLIAMS: The Judge's decision and order, dated
4 July 2, 1974 -- I will hand my copy up
5 to the Court -- reads: "The United
6 States Attorney is directed to further
7 answer the demand for a bill of par-
8 ticulars, giving the defendant more
9 precise information about the crime
10 charged. The only additional, precise
11 information I could give is where the
12 overt acts took place, and that is
13 precisely what I did.

14 MR. SELLERS: That is something I already had, and
15 the Court knew I had it.

16 THE COURT: I would say the Court decision is not
17 too precise in itself; to give you more
18 precise information, he should indicate
19 exactly what he wanted.

20 MR. SELLERS: I have received absolutely nothing.

21 MR. WILLIAMS: Yesterday was the first time I had
22 knowledge or notice by Mr. Sellers
23 that he wasn't satisfied with the bill
24 of particulars.

25 THE COURT: I deny your motion. We will go to trial.

1 MR. SELLERS: I take exception.

2 THE COURT: You don't need to take exception, you
3 haven't needed to for for y years, the
4 federal rules give you one automatically.

5 MR. WILLIAMS: I would like to make a very brief motion,
6 if I may. The bill of particulars --
7 I have supplied really two bills of
8 particulars -- one of the allegations in
9 the bill of particulars is that an
10 overt act took place on or about June
11 of 1972. Now, this is all the inform-
12 ation I had from the grand jury, from
13 discussion with witnesses, and it wasn't
14 until last night, when I had a witness
15 who told me he had given this thorough
16 thought and consideration, and the
17 day he pinpoints to be the end of April
18 or the forepart of May 1972, and not on o
19 about June 1972.

20 THE COURT: This is after you told the defendant
21 it was at another time?

22 MR. SELLERS: The indictment, bill of particulars --

23 THE COURT: Please, I'm asking counsel. Do you mind
24 remaining quiet a minute?

25 MR. SELLERS: Yes, your Honor.

- 1 THE COURT: What about it?
- 2 MR. WILLIAMS: The information I supplied, your Honor,
3 was that the act took place --
- 4 THE COURT: At a different time?
- 5 MR. WILLIAMS: In June 1972.
- 6 THE COURT: I preclude you from putting in any
7 information as to a different day from
8 the one you gave counsel in the bill
9 of particulars. You are precluded from
10 putting in any evidence other than that.
- 11 MR. SELLER: May I ask specifically what count of
12 the indictment the United States Attorney
13 is referring to?
- 14 MR. WILLIAMS: Count Number 2, which charges that the
15 defendant on or about June did certain
16 things.
- 17 MR. SELLER: May I ask as to --
- 18 THE COURT: Which overt act is that?
- 19 MR. WILLIAMS: Number 1. This is in regard to the
20 substantive count, Count 2, where the
21 indictment reads on or about June 1972.
22 The bill of particulars that I have
23 supplied was in June on a Saturday
24 night.
- 25 THE COURT: Yes?

1 MR. WILLIAMS: Now, the motion I have just made was to
2 amend that. Based upon the testimony
3 now, as the result of an interview with
4 my witness, it is early May of 1972.
5 Secondly --

6 THE COURT: I think that is too late. If I were
7 to grant that I would have to adjourn
8 the trial. Take your choice. If you
9 want to adjourn it, that is all right
10 with me. Counsel comes up to trial
11 in a --

12 MR. SELLERS: Your Honor, may I ask --

13 THE COURT: Please. I never saw anything like you.

14 MR. SELLERS: I apologize, your Honor.

15 THE COURT: Do you mind if I discuss this with the
16 United States Attorney, and hear one
17 side at a time? Would you sit down
18 until I call on you for your turn?
19 All right. You can't bring counsel
20 up to trial in the belief and on the
21 representation that something took
22 place in June and then switch it to
23 May. Obviously, he has no opportunity
24 to present it. Maybe he would like to
25 argue that he did, he is so eager to

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1 interrupt me.

2 MR. WILLIAMS: Under the circumstances, your Honor,
3 with the Court's indulgence, I would
4 ask for a continuance and adjournment
5 at this time.

6 THE COURT: I will grant counsel's motion for a
7 continuance. I direct you to furnish
8 the particulars in accordance with
9 Judge Curtin's ruling. If there is
10 uncertainty about it, and it surely
11 seems to me that there is, I think
12 you should apply to Judge Curtin for
13 a clarification of exactly what he wants
14 you to do, and do it.

15 MR. WILLIAMS: I will do so.

16 THE COURT: All right.

17 MR. SELLERS: Thank you, your Honor.

18 THE COURT: This kind of thing should be straightened
19 out in about ten days after an indict-
20 ment, not on the eve of trial on a two
21 year old case.

22 MR. SELLERS: Off the record. My reason for the
23 interruption at that point is I wanted
24 to know how that information affected
25 the overt act alleged as occurring

1 during June --

2 THE COURT:

3 Take it up with Judge Curtin, it is his
4 order, not mine. If it isn't clear,
5 straighten it out.

6 * * * * *

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12 I hereby certify that this record
13 true and accurate transcript from the
14 stenographic notes in this proceeding.

15 H. T. Noel
16 Official Reporter
17 U. S. District Court
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d. An expert fee for Defendant or his attorney
shall be paid to any findings of conviction made by or on
behalf of the United States government or its
agents.

e.

1. The indictment herein is ill-founded and in
violation of orders of the Court.

2. Pursuant to numerous requests by the Defendant
for a factory response to his Demand for a Bill of Particulars
relating to Indictment No. 1973-300, the Hon. U.S.
District Judge, on the 2nd day of July, 1974,
ordered the United States attorney to "further amend the
Bill of Particulars giving the Defendant more
information about the crime charged". With leave of
motion was made by Defendant on November 12, 1974 to
amend Indictment No. 1973-300 for a failure to comply with
the Court's Demand for a Bill of Particulars as well as with
the Court's order. This motion was granted by the Hon.
Judge P. H. Hatcher, United States District Judge,
on November 12, 1974.

3. On November 15, 1974, when Indictment
1973-300 was called on the trial calendar, the United States

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defendant announced same as being ready for trial. The court then attempted to renew and re-argue the motions to the United States attorney opposed and which the Court then ordered the defendant to proceed to trial. The United States attorney then made a motion to amend both his Bill of Particulars and the indictment based upon information which he had recently received recently and which the Grand Jury had not received. The Court then precluded the United States attorney from amending his indictment or Bill of Particulars and limited his pleadings to those alleged within the Bill of Particulars, whereupon the United States attorney requested an adjournment and continuance which the Court granted to an unspecified date and specifically ordered the United States attorney to comply with the Hon. John T. Carter's order and seek clarification of same, if necessary.

4. The United States attorney chose, in lieu of complying with the Court's orders, to subvert and attempt to obtain a superseding indictment (No. 1974-303) which duplicates Indictment No. 1973-300. This new indictment, which deals with the same acts, facts and circumstances as the original indictment, is a blatant and totally obvious attempt to avoid two court orders as to furnishing a Bill of Particulars with which it cannot comply. To obtain

United States attorney to so blatantly avoid the dictum of this Court as it chooses to attempt herein, confers upon them a power; that of using the indictment process as a means of punishing individuals based upon their suspicions when they have insufficient facts at hand to prove those suspicions beyond a reasonable doubt as our laws require. To allow this indictment to stand, condones the conduct of the United States attorney in allowing that office to ignore the orders of this Court merely by obtaining superceding indictments.

5. The United States attorney is attempting to ignore the orders of this Court as clearly shown by a comparison of Indictment No. 1973-300 and the superceding Ind. No. 1974-303.

The first overt act of Count No. 1 of Indictment No. 1973-300 is totally excluded and not even referred to in superceding Indictment No. 1974-303. The second overt act is also totally excluded unless the United States attorney admitted it (an act which this Court prohibited) by a letter to the end of April or early May and nothing more. Paragraph No. 9 of Indictment No. 1974-303. The third overt act of Indictment No. 1973-300 also cannot be found in the new Indictment No. 1974-303, knowing, upon information and belief, that all witnesses

the United States attorney to obtain the new indictment and that to obtain the first indictment is the omission of the three overt acts of Indictment No. 1972-300, an admission by the United States attorney that he cannot now nor never could comply with the Court's orders relating to the Bill of Particulars; as well as the finding an admission of an attempt to ignore the orders of the Court. A quick look at the second count of both indictments simply shows that Indictment No. 1974-303 amends Indictment No. 1972-300 as to the date of the alleged act, an amendment which, on November 13, 1974, the Hon. Lloyd F. MacMahon specifically prohibited.

6. Thus, this Indictment should be dismissed as being in complete violation of both the spirit and letter of the prior orders of this Court.

II.

1. The Defendant requests the Indictment be dismissed on its being perfectly vague and indefinite as to the commission of the alleged acts, in violation of Rule 7(c)(2) of the Federal Rules of Criminal Procedure.

2. The allegations set forth in Indictment No. 1974-303 are totally vague and indefinite in respect to the date and place of the commission of the alleged acts, as well as Count One, overt acts number 5, 7, 10, 11 and 12 cover a

know, with a great degree of specificity, what the charges are. An indictment so framed allows for a Defendant to formulate a defense and the Courts to process a matter in an orderly manner. It is a clear violation of Rule 7(c)(1) when a Defendant is given an indictment, which he has been told supercedes a prior indictment, and can find similarity only as to a co-conspirator and the crime charged. It leaves the Defendant, as well as your Department, with one major question, that being since Indictment No. 1974-303 incorporates none of the acts or dates which were alleged in Indictment No. 1973-300 is or does this new indictment deal with an act or acts totally different and distinct from that on which Indictment No. 1973-300? Until an answer to this question is received, the defense is totally stymied in its preparation.

I.

1. That Indictment No. 1974-303 deprives the Defendant of a speedy trial in violation of Rule 43(b) of the Federal Rules of Criminal Procedure.

2. The Defendant herein has, since January 1973, been seeking a Bill of Particulars to determine what he has done and where he has performed the acts of which he is now accused as alleged in Indictment No. 1973-300. On November 1, 1974, when the Defendant was ordered to trial on this indictment,

he was still without a sufficient Bill of Particulars and sought a dismissal because of his lack of said Bill of Particulars, an action which the United States attorney opposed, and succeeded in his opposition. Then, the United States attorney sought to amend his Bill of Particulars and Indictment to contain newly discovered matter. Upon denial of this request, the United States attorney obtained a continuance and a new Indictment (No. 1971-300).

3. It is the contention of your Dependent that the information which the United States attorney claimed was newly acquired; to wit, the date in Count Two, being April or May of 1972 and not on or about June, 1972, is not newly acquired but has been within their knowledge since early 1973 (See Court's testimony of James Gambacorta of August 6, 1973 at Page 37, 38, 39 and referred to in the decision and order of the Hon. Judge T. Curtin, United States District Judge, on July 2, 1974 and entered Indictment No. 1973-300).

4. Furthermore, even though Indictment No. 1971-300 did in substance so allege that the information was newly acquired, it is supposed to supersede, in consideration of the Court's testimony and exhibits leading to Indictment No. 1973-300, contains sufficient information to indicate that the United States attorney had knowledge in August, 1973 of all that information.

which, in November, 1974, led to Indictment No. 1974-302, especially since all Grand Jury witnesses are the same for both Indictments.

5. By proceeding in such a manner by compelling the Defendant, after fourteen (14) months of proceedings and preparations, to begin his preparation anew as to matters which are different and more remote in time than those with which he was first faced, works an unbelievable hardship upon the Defendant in that it not only continues the mental, psychological and emotional strain under which the Defendant thought he would rid himself of on November 13, 1974, but also the social pressures and ostracism which one who has been indicted must later suffer, not to mention the financial burden which the Defendant has been forced to assume.

6. The delay in this matter, from the very first, must rest solely upon the shoulders of the government and this matter should be dismissed based upon unnecessary and excessive delays.

DEFENDANT'S CONCLUSIONS:

1. Based upon the Court's granting of all that is granted in the various motions set forth in these papers, the Defendant respectfully reserves his right to make further

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff

-vs-

CR-74-303

JOSEPH CAMPANA

Defendant

In September of 1973, the defendant was charged in CR-1973-300 for a conspiracy to violate 18 U.S.C. §473 between November 1971 and June 1972. He was also charged with a substantive count occurring on or about June 1972. On November 12, 1974, when the parties appeared before Judge Lloyd F. MacMahon for trial, the government discovered that the charged events occurred in May rather than in June of 1972. Judge MacMahon denied the government's motion to amend the Bill of Particulars and said that he would preclude them from putting in any evidence about a day different from the one given in the Bill of Particulars. He granted a continuance of the trial.

In November 1974, a new indictment, CR-1974-303, was filed, charging a conspiracy running from December 1970

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-2-


to June 1972, and also charging that a substantive violation of the statute occurred at the end of April 1972 or early May 1972. In response to a motion by the defendant, the government has supplied a Bill of Particulars. Defense moves for dismissal of the indictment because of the failure of the government to supply an adequate Bill of Particulars, and because the filing of the indictment was in contradiction to the order of Judge MacMahon. It is defendant's position that the government was limited to moving before me to amend its bill and was precluded from filing a second indictment. The government represents that CR-1973-300 will be dismissed. The Discovery was referred to the Magistrate, who recommends that the bill submitted by the government be considered sufficient.

I have reviewed the Bill of Particulars submitted and have determined that it is sufficient under the rules. The procedure followed does not violate Judge MacMahon's order. The motion of the defendant to dismiss the indictment on the grounds urged is denied. In the alternative, the motion to file a more detailed Bill of Particulars is also denied.

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-3-

So ordered.



JOHN T. CURTIN
United States District Judge

DATED: August 8, 1975

DEFENDANT: JOSEPH CAMPANA WESTERN DISTRICT OF NEW YORK
 Cr-1974-303
 DOCKET NO. April 29, 1976

In the presence of the attorney for the government
 the defendant appeared in person on this date April 29, 1976

COUNSEL: ☐ WITHOUT COUNSEL However, the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL Jeffrey Sellers
 (Name of counsel)

PLEA: ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOT O CONTENDERE, ☐ NOT GUILTY

There being a ~~guilty~~ verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.

FINDING & JUDGMENT: Defendant has been convicted as charged of the offense(s) of Conspiracy to commit offenses against the U.S., by making certain counterfeited obligations of the United States with intent to defraud, and by transferring and delivering certain counterfeited obligations of the U.S. with the intent that the same be used as true and genuine (Ct. 1), in violation of Title 18, U.S.C., Section 371

SENTENCE OR PROBATION ORDER: The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby sentenced as follows: Defendant is sentenced pursuant to Title Section 3651. Defendant is sentenced to a period of One and One-Half (1 1/2) Years. He shall be confined to a jail type institution for a period not to exceed six (6) months. Execution of the remainder of the sentence is suspended and the defendant is placed on probation for a period of Two (2) Years following the Six (6) Month jail sentence.

Count Two is hereby dismissed.

SPECIAL CONDITIONS OF PROBATION

FILED
 MAY 5 1976
 AT C.C.
 BY JOHN K. ADAMS, Clerk

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk do and a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

John T. Curtin
 JOHN T. CURTIN, U.S. DISTRICT JUDGE

Date April 29, 1976

No. 100-100000

UNITED STATES DISTRICT COURT
WESTERN District of NEW YORK

~~NEW YORK~~

THE UNITED STATES OF AMERICA
vs.
JOSEPH CAMPANA

INDICTMENT
SUPERSEDING

A true bill,

Harold R. Jansen
Foreman.

Filed in open court this _____ day
of _____, A. D. 19____

Clerk.

Bail, \$_____

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In the District Court of the United States

For the Western District of New York

JOSEPH CAMPANA

JOSEPH CAMPANA

Case No. 100-10000

Indictment No. 100-10000

No.

Vic Title 18, U.S.C.,
§§ 371 and 473

CHARGE I

The Grand Jury Charges:

That on and between about December, 1970 and June, 1972, in the Western District of New York, the defendant, JOSEPH CAMPANA, and Edward Barczak, named as a co-conspirator but not a co-defendant, wilfully, knowingly and unlawfully did combine, conspire and agree together to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 471 by making certain counterfeit obligations of the United States with the intent to defraud and to violate Title 18, United States Code, Section 473 by transferring and delivering certain counterfeit obligations of the United States with the intent that the same be used as true and genuine; all in violation of Title 18, United States Code, Section 371.

CHARGE II

At the times hereinafter mentioned, the following overt acts were committed in furtherance of said conspiracy to effect the objects thereof:

1. Sometime in December, 1970 or January, 1971, defendant, JOSEPH CAMPANA, asked Edward Barczak to make counterfeit money.

1. That sometime between January, 1971 and March, 1971, the defendant, JOSEPH CAMPANA, told Edward Barczak he would receive a share of any profits derived as a result of the sale of counterfeit currency.

2. That sometime between January, 1971 and March, 1971, the defendant, JOSEPH CAMPANA, told Edward Barczak he would sell the counterfeit obligations in bulk.

3. That sometime in January or February, 1971, the defendant, JOSEPH CAMPANA, gave to Edward Barczak several genuine \$10 Federal Reserve Notes.

4. That sometime in May, 1971, Edward Barczak gave to the defendant, JOSEPH CAMPANA, at his request, approximately 50 to 60 counterfeit \$10 Federal Reserve Notes.

5. That in approximately April or May, 1971, the defendant, JOSEPH CAMPANA, told Edward Barczak he wanted sample counterfeit \$10 Federal Reserve Notes to show to his customers.

6. That around the end of December, 1971 or early January, 1972, the defendant, JOSEPH CAMPANA, gave to Edward Barczak several genuine \$10 Federal Reserve Notes.

7. That between January, 1972 and March, 1972, the defendant, JOSEPH CAMPANA, gave to Edward Barczak a series of notes relative to the printing of counterfeit currency.

8. That sometime around the end of March, 1972 or early April, 1972, the defendant, JOSEPH CAMPANA, gave to Edward Barczak a quantity of paper.

9. That on or around the end of April, 1972 or early May, 1972, Edward Barczak printed approximately \$80,000 in counterfeit \$10 Federal Reserve Notes.

10. That on or around the end of April, 1972 or early May, 1972, the defendant, JOSEPH CAMPANA, took into his possession approximately \$7,000 in counterfeit \$10 Federal Reserve Notes.


11. That on or around the end of April, 1972 or early May, 1972, the defendant, JOSEPH CAMPANA, took into his possession approximately \$7,000 in counterfeit \$10 Federal Reserve Notes.

12. That on or about the end of May, 1972 or early June, 1972, the defendant, JOSEPH CAMPANA, told Edward Barczak to maintain custody of the plates and negatives used in the printing of counterfeit currency.

COUNT II

The Grand Jury further charges:

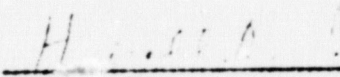
On or about the end of April, 1972 or early May, 1972 in the Western District of New York, the defendant, JOSEPH CAMPANA, did willfully and knowingly receive approximately \$80,000 in false and counterfeit obligations of the United States, to wit, \$10 Federal Reserve Notes, with the intent that the same be used as true and genuine Federal Reserve Notes; all in violation of Title 18, United States Code, Section 473.



JOHN T. ELFVIN

United States Attorney

A TRUE BILL:



Foreman

1 don't you try to arrange that a little
2 ahead of 1:00 o'clock so that we are out
3 of the building and you do not have to
4 leave in any kind of a rush. If there
5 is a fire drill, leave the building and
6 stay together and as you go out in the
7 fire drill, certainly do not talk to
8 other people and do not talk about this
9 particular case during that period of
10 time and I suppose it is a good idea
11 that we do this once in a while so that
12 if there is an emergency, we can have
13 some idea of what to do, but nobody has
14 to run in a fire drill. Everybody walks.

15 It is my obligation at this time
16 to charge you on the law which applies
17 to this case. Certainly I do it to the
18 best of my ability. It is your function
19 to accept the law as I charge it to you,
20 to the best of your ability. This has
21 not been a long trial so I will not review
22 the facts in detail. You have heard the
23 summations of Mr. Williams and Mr.
24 Sellers and they have called to your
25 attention their arguments about the facts

and how they believe the facts will
apply to the law as I charge it, and both
have done so in a very forceful manner.

Some of the material I will talk
to you about we have discussed before,
but it is important and we ought to talk
about it again. We start from the be-
ginning and that is that an indictment is
not evidence on a trial. The purpose of
an indictment is to inform the defendant
of the charges placed against him so that
he may properly defend himself and to
make sure that he will not be charged
again for the same crime. As an aid to
you and as an aid only, we will deliver
a copy of the indictment or the indictment
to you in the jury room. It is not an
exhibit in evidence. It is not evidence.
It is only a score sheet which your fore-
man will use when you come back in to
court when you have finally arrived at
a unanimous verdict. Your verdict must
be unanimous on both counts, either for
or against. When you announce your
verdict in open court, your foreman will

1 orally answer the questions put to you
2 by Mr. White and that is either guilty
3 or not guilty and it will be as to Count
4 1 and Count 2.

5 It is important again to repeat
6 that Mr. Campana is presumed innocent.
7 He is still presumed innocent and that
8 presumption remains with him and it
9 cannot be overcome unless you are
10 satisfied beyond a reasonable doubt of
11 his guilt and you are satisfied beyond
12 a reasonable doubt because of evidence
13 produced in this case which you find to
14 be material and relevant to the issues
15 and point to his guilt beyond a reasonable
16 doubt.

17 In order to determine that, you
18 will deliberate. You will consider the
19 testimony of the witnesses in the case;
20 how the testimony of the witnesses com-
21 pares one with another; how their direct
22 testimony stood up under cross examination
23 how the testimony of the witness as it
24 related to exhibits which are in evidence,
25 which, you know, the exhibit, there will

1 be a date on the exhibit. Maybe a
2 witness testified to an event. Was his
3 testimony supported by the exhibit or do
4 you think it was discounted by the exhibit,
5 one against the other, and you will
6 thrash these things back and forth in your
7 group. You will do it, of course,
8 seriously, conscientiously, reasonably.
9 On the one hand, you will not be persuaded
10 by bias or prejudice for or against the
11 accused in this case because of any
12 improper reason. On the other hand, you
13 will not be swayed by sympathy for the
14 defendant. You will not permit any
15 consideration of sentence to enter into
16 your mind because it is your function
17 not to determine sentence, but to deter-
18 mine guilt or innocent. The law pro-
19 vides that any sentence shall be carried
20 out by the Court only after a finding
21 of guilt.

22 To determine the facts, we sometimes
23 put it around another way and talk about
24 direct or circumstantial evidence.
25 Direct evidence, - that is, what did a

1 man say, what did a witness overhear
2 someone remark. Direct evidence, what
3 does a particular exhibit mean. In this
4 case, we have the plates, the money,
5 those kinds of other, - I cannot recall
6 any photographs, but photographs, things
7 like that, direct evidence. We also
8 have what we call circumstantial evidence.
9 That is from facts which you find to be
10 reasonably proved in the case that you
11 draw certain conclusions from those facts.
12 We do this in our everyday life all the
13 time. We know, for example, last night,
14 yesterday, it was a bright, cheerful clear
15 day and this morning when we awoke, it
16 was raining. If the rain had stopped
17 during the night and we just saw wet
18 streets and we did not see any rain, of
19 course, seeing the rain the morning and
20 feeling its wet impact, it's direct
21 evidence, but if you merely looked out
22 and saw wet streets and wet sidewalks and
23 wet trees and it wasn't raining anymore,
24 you could circumstantially come to the
25 conclusion that it had rained during the

1 night.

2 Circumstantial evidence must
3 certainly be approached with care. It
4 must be based on reason. If you were
5 away for a day or two and while you were
6 gone it snowed and it was clear when you
7 left, then you could circumstantially
8 come to the conclusion that it snowed
9 when you left, but if you were gone for
10 several days, you would not be able to
11 tell reasonably when it did snow so when
12 you are handling, - you may use circum-
13 stantial evidence, you may find guilt
14 or innocence based on circumstantial
15 evidence, but you must approach it with
16 reason and common sense and because it is
17 the burden on the Government to prove
18 guilt beyond a reasonable doubt, if
19 reasonably you can come to two conclusions
20 based upon circumstantial evidence, one
21 pointing to guilt and the other pointing
22 to innocence in a criminal case such as
23 this is, because of the heavier burden
24 on the Government of proving guilt, then
25 you must accept the inference pointing

1 to innocence. That is, if you have
2 circumstantial evidence which reasonably
3 can be taken one way or another. Certain-
4 ly in the snow example that I have given
5 to you, under that kind of consideration
6 if guilt or innocence hinged on that,
7 you would certainly have to use that
8 inference as pointing to one of innocence.

9 In the case here, we have talked
10 about how you arrive at the evidence
11 through the exhibits which are here. You
12 know that certain exhibits have been
13 marked into evidence and as to those,
14 they will be delivered to you in the
15 jury room and you can look at them, you
16 can examine them, you can talk about them,
17 you can discuss them. There have been
18 certain exhibits which have been marked
19 and referred to which will not be delivered
20 to you. They will not be delivered to
21 you any one of a number of reasons. If
22 there was discussion about them in court,
23 you may consider the discussion, but
24 otherwise, since it is not there before
25 you, you will not have those exhibits

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1 which are not in evidence and they will
2 not be delivered to you.

3
4 On the witnesses you know, of course,
5 just as in ordinary life, merely because
6 someone takes the stand does not mean
7 that you have to accept everything he
8 says, and that includes, - we had in this
9 case several agents. I talked to you
10 about this before. Simply because a man
11 is an agent, does not mean that you accept
12 everything he testifies about. You should
13 consider his direct testimony, his cross
14 examination and how his testimony com-
15 pares or fails to compare with other
16 witnesses in the case. You should care-
17 fully scrutinize all the testimony given,
18 the circumstances under which each
19 witness testified, every matter in evidence
20 which tends to show whether the witness is
21 worthy of belief. You should consider
22 the witness' intelligence, motive, state
23 of mind, demeanor and manner while on the
24 stand. You should consider the witness'
25 ability to observe the matters that he
has testified to, whether he has an

1 accurate recollection of what has occurred.
2 In this case, certainly, you may consider
3 the passage of time as to whether or not
4 a witness has accurately recalled what
5 happened. You may consider the relation
6 which the witness may have to either
7 side of the case, the manner in which the
8 witness may be affected by the verdict,
9 the extent to which at all he is either
10 supported or contradicted by other evidence
11 in the case. You should determine whether
12 or not he may, because of his position,
13 want to slant his testimony in any way
14 for or against either side of the case.

15 In this case, both Mr. Barczak and
16 Mr. Gambacorta have had charges placed
17 against them. They are awaiting sentence.
18 They have admitted, they have talked about
19 printing counterfeit money, as Mr.
20 Barczak did, and certainly a criminal
21 offense. You may consider whether or
22 not any of these events has influenced
23 consciously or unconsciously his testimony
24 in the case or the testimony of Mr.
25 Gambacorta who has indicated to you his

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1 involvement with counterfeit money.

2 Witnesses such as these who have told you
3 about criminal endeavors in the particular
4 matter which is at issue before you here,
5 their testimony must be looked at by you
6 with caution and concern and scrutiny and
7 may only be accepted if you are convinced
8 after a thorough examination of their
9 testimony and how it relates to other
10 portions of the case that you find that
11 it is worthy of belief. If you do find
12 it is worthy of belief, certainly then
13 you may apply it and if you are convinced
14 beyond a reasonable doubt on their testi-
15 mony alone, then you may find a verdict
16 of guilty in the case.

17 As far as handling the testimony
18 of any witness, you should consider
19 whether or not there are inconsistencies
20 or discrepancies between their testimony
21 and the testimony of others. Two or
22 more persons witnessing an incident or
23 transaction may see or hear it differently.
24 Innocent misrecollection is not an un-
25 common experience. In weighing the

1 effect of a discrepancy always consider
2 whether it pertains to a matter of
3 importance or an unimportant detail and
4 whether the discrepancy results from
5 innocent error or intentional falsehood.

6 In any criminal case, it is a
7 basic rule that a defendant is presumed
8 innocent until proven guilty beyond a
9 reasonable doubt. As I have explained
10 to you before, that presumption remains
11 with the defendant throughout the trial
12 and continues to exist until you are
13 convinced beyond a reasonable doubt by
14 legal and competent evidence that a
15 defendant is guilty of the offense charged.
16 That burden rests with the Government at
17 all times. It never shifts to the defend-
18 ant. The Government must prove each
19 element of the crime charged beyond a
20 reasonable doubt.

21 A reasonable doubt is a fair doubt
22 based upon reason and common sense and
23 arising from the evidence. It is rarely
24 possible to prove anything to an absolute
25 certainty. A reasonable doubt is not a

1 vague, speculative or imaginative doubt,
2 but it is such a doubt as would cause
3 prudent men to hesitate before acting
4 in matters of importance to themselves.

5 As I have explained to you before,
6 a defendant is not to be convicted on
7 suspicion, conjecture or surmise.

8 It follows from that that in this
9 case, as you know, Mr. Campana did not
10 take the stand. That is his right not
11 to take the stand. You may not consider
12 that in any fashion. You may not talk
13 about it. You may not think about it
14 in any way. The fact that he did not
15 take the stand may not be used against
16 him in any fashion in this case.

17 If you will excuse me for just a
18 minute, please. I want to look at some-
19 thing. My trouble, ladies and gentlemen,
20 is I have too many papers. There is
21 something more that I wanted to say about
22 reasonable doubt and I will get to that
23 in a minute, but now we will turn to a
24 consideration of the elements in this
25 case.

1 You will note when you receive the
2 indictment that Count 1 charges Mr.
3 Campana and Edward Barczak, a co-conspira-
4 tor who is not charged as a co-defendant,
5 that they conspired to violate Section
6 473 of Title 28 by making, transferring
7 and delivering counterfeit obligations
8 of the United States. Section 371 of
9 Title 18 provides in part that if two
10 or more persons conspire to commit any
11 offense against the United States and one
12 or more such persons do an act to effect
13 the object of the conspiracy, each is
14 guilty of an offense against the United
15 States. As I have explained to you when
16 we began the case, a conspiracy, the charge
17 there, the main element is the planning
18 of an unlawful crime with an overt act
19 by one of the conspirators to carry it
20 forward. Of course, if the crime is
21 completed, then that may be considered as
22 some evidence of the conspiracy, but even
23 in a conspiracy, if it is not completed,
24 if merely there is an unlawful agreement
25 which the participants willfully and

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knowingly entered into and then one of them committed an overt act to carry it forward, then the crime of conspiracy is completed.

In order to convict the defendant on the conspiracy count in this indictment, the Government must prove to your satisfaction beyond a reasonable doubt the following three elements:

Number one, the existence of a conspiracy for the purpose of willfully, knowingly and intentionally making certain counterfeit obligations of the United States with the intent to defraud and by transferring and delivering such obligations with the intent the same be used as true and genuine.

Secondly, that the defendant joined the conspiracy with knowledge of its unlawful purpose and thirdly, that either of the conspirators committed at least one overt act in furtherance of the objects of the conspiracy.

What is a conspiracy. It is a combination or agreement among two or

1 people to violate the law as charged in
2 the indictment. In other words, an
3 agreement to make or an agreement to
4 make, transfer and deliver counterfeit
5 obligations with the intent to defraud
6 or with the intent that those obligations
7 be used as true and genuine.

8 A conspiracy sometimes is referred
9 to as a partnership in a criminal purpose.
10 The gist of the crime is the agreement to
11 violate the law. It does not mean that
12 the individuals must meet, however, and
13 form some kind of a, - and sign some kind
14 of a formal partnership agreement or that
15 they must sit down and agree in so many
16 words what their unlawful plan or scheme
17 is or how they will carry it out. The
18 first element is satisfied if you find
19 beyond a reasonable doubt that two or more
20 people in any way intentionally combine
21 or agree to a common plan knowingly and
22 intentionally to make counterfeit obliga-
23 tions of the United States and, of course,
24 this means as charged within the time
25 frame as charged in the indictment.

1 A conspiracy may be found to exist
2 although the purpose of the conspiracy is
3 never accomplished. Proof, however, that
4 the conspiracy was accomplished is the
5 most persuasive evidence of the existence
6 of the conspiracy itself.

7 Turning to the second element the
8 Government is required to prove beyond
9 a reasonable doubt that each defendant
10 joined the conspiracy with knowledge of
11 its unlawful purpose. When I say
12 "join the conspiracy", I do not mean that
13 the defendant has to apply for some kind
14 of membership. Before one can be found
15 to be a conspirator, however, he must
16 know about the conspiracy and of its
17 unlawful purpose and voluntarily and
18 knowingly join the criminal venture with
19 an intent to combine with others in
20 violation of the law. He must knowingly
21 promote the scheme or have some kind of
22 stake in its outcome. One may become
23 a member of a conspiracy without knowing
24 all the details of the operations of the
25 conspiracy. One defendant may know only

1 one other member of the conspiracy yet
2 if he knowingly cooperates to further the
3 illegal purpose of the conspiracy with
4 knowledge that others have combined to
5 violate the law, he becomes a member al-
6 though his own role may be insignificant.

7 If you find that a defendant did
8 join a conspiracy then he is bound by
9 what others say and do to promote and
10 further the venture even though he himself
11 is not present. This is so because each
12 conspirator is the agent or partner of
13 every other conspirator.

14 The third element of the crime of
15 conspiracy is the commission by any
16 conspirator of at least one overt act
17 in furtherance of the object of the
18 conspiracy.

19 An overt act means an act by any
20 member of the conspiracy in an effort
21 to accomplish some purpose of the con-
22 spiracy. The reason the law of conspiracy
23 requires an overt act is because a person
24 might agree to commit a crime and then
25 change his mind and certainly it is to

1 prevent the charging or the trying or
2 the conviction of a person or persons
3 of merely conversation. Three or four
4 people sit around a kitchen table and
5 talk about robbing a bank, but nobody
6 takes any steps to accomplish it and
7 certainly those individuals should not
8 be charged with any crime. That is why
9 it is important that in your consideration
10 of the conspiratorial agreement that
11 you find whether or not there has been an
12 overt act committed. Before you can
13 find the defendant guilty, you must find
14 not only the conspiratorial agreement
15 was entered into and that he entered into
16 it knowingly and willfully but that also
17 one of the members committed an overt act.
18 It means that one or more of the conspir-
19 ators must have taken at least one step
20 or performed one single act which moved
21 toward carrying out the unlawful intent
22 to commit the crime. If those acts were
23 performed by any member of the conspiracy
24 whether or not it is the defendant on
25 trial and those acts were performed during

H. T. Noel & E. F. Knisley

OFFICIAL REPORTERS, U. S. DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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1 the existence of the conspiracy and in
2 furtherance of its purpose, then those
3 acts are sufficient to satisfy the
4 third element.

5 The Government is not required to
6 prove that each of the overt acts alleged
7 was committed. It is enough that the
8 Government prove beyond a reasonable
9 doubt that at least one overt act charged
10 was committed in furtherance of the
11 conspiracy by one or more members of it.

12 Turning to Count 2, this count in
13 summary, and you will have the indictment
14 before you for your consideration, charges
15 the defendant Joseph Campana with receiving
16 about \$80,000 in false and counterfeit
17 obligations of the United States. Section
18 473 of the United States Code provides in
19 part that whoever receives any false,
20 forged, counterfeited or altered obligation
21 of the United States; - Section 473 upon
22 which Count 2, or for which Count 2
23 charges the violation provides in part that
24 whoever receives any false, forged,
25 counterfeited or altered obligation of the

1 United States with the intent that the
2 same be passed, published or used as
3 true and genuine is guilty of an offense
4 against the United States. In this count,
5 the Government must prove beyond a reason-
6 able doubt three essential elements.

7 Firstly, that the defendant received
8 counterfeit obligations of the United
9 States.

10 Secondly, that the defendant knew
11 at the time that the obligations were
12 counterfeit.

13 Thirdly, that he received the
14 counterfeit obligations with the inten-
15 tion that they be passed, published or
16 used as true and genuine.

17 You must, of course, find that the
18 defendant entered into this, if you find
19 the other elements, that you must find
20 that he did so willfully and knowingly,
21 not through any mistake, that he par-
22 ticipated with the specific intent to
23 disregard or disobey the law.

24 Under the law, the term "obligations
25 of the United States" means Federal

1 Reserve notes of whatever denomination.

2 In this case, you will recall that
3 Joseph Carlon, one of the Government
4 witnesses, testified that in his opinion
5 the money that he seized was counterfeit
6 currency. Usually, the rules of evidence
7 do not permit a witness to testify about
8 his opinion or conclusion. One exception
9 to this rule is in the area of what we
10 call expert witness. An expert witness
11 is a person who because of education,
12 training or experience becomes expert in
13 a certain field like a doctor because of
14 his training in medicine can testify as
15 to his opinion. A surveyor may testify
16 about maps, diagrams; an engineer about
17 the operation of an engine. In this case
18 here, Mr. Carlon professed an opinion
19 about whether or not this money was counter-
20 feit. In considering testimony like
21 this, it is up to you to determine how
22 much weight you think the testimony
23 deserves. You should consider the witness'
24 background, his experience, his training
25 and then you should also consider all

1 other evidence in the case which tends
2 to indicate whether or not his opinion
3 is worthy of your belief or not. You may
4 accept the testimony or you may disregard
5 it. It is up to you in your good judgment.

6 There was also testimony by Mr.
7 Pochopin in a similar regard in that he
8 looked at certain bills and, of course,
9 you should consider his training, his
10 background and also other facts in the
11 case to determine whether or not his
12 opinion which he has given to you is
13 worthy of belief.

14 There are several other things
15 which you should consider. On the
16 conspiracy count, you should consider the
17 testimony, certainly, to determine whether
18 a man joins a conspiracy, that determina-
19 tion must be made upon what he did, what
20 he said. It may be determined by direct
21 or circumstantial evidence, but in handling
22 the testimony or handling the question
23 about whether or not he joined the con-
24 spiracy that can only be determined by
25 what he did or what he said, not by what

1 other individuals said or did.

2 In the indictment here, you will
3 find that some of the dates or after
4 listening to the testimony and the argu-
5 ment, you may find that some of the
6 events that the witnesses testified to
7 did not happen exactly as set forth in
8 the indictment. In this regard, the
9 Government is not obliged to prove that
10 the events happened on the exact day as
11 set forth in the overt act, for example.
12 They must prove that they happened close
13 to the time that they are charged and
14 alleged. As far as Count 2 of the indict-
15 ment, it charges on or about the end of
16 April, 1972 or early May, 1972 that
17 certain things happened. From the evidence,
18 you may find that the acts happened a
19 month earlier, in between time somewhere
20 or you may find that it didn't happen at
21 all, and, of course, that is certainly
22 up to you to determine, but merely because
23 the Government did not prove that the
24 acts happened on exactly the time set
25 forth in the indictment does not mean

1 that the charge would be defeated.

2 In this regard, it is necessary
3 again to emphasize that the Government
4 must prove the happening of all the
5 events beyond a reasonable doubt and that
6 the acts were committed on or about the
7 time set forth in the indictment.

8 I knew I wanted to say a little bit
9 more about reasonable doubt and as I
10 explained to you, I have too many papers
11 and the paper I had did not have the
12 particular charge. I could have given it
13 to you, but I wanted to be sure that
14 I gave it to you accurately because it
15 is an important part of any criminal
16 case that the defendant not be found
17 guilty unless you are satisfied of his
18 guilt beyond a reasonable doubt.

19 Some of this material maybe I
20 discussed with you before, but if I
21 repeat it again, it certainly would not
22 hurt. Reasonable doubt may arise not
23 only from the evidence produced, but also
24 from the lack of evidence. Since the
25 burden is upon the prosecution to prove

1 the accused guilty beyond a reasonable
2 doubt of every essential element of the
3 crime charged a defendant has the right
4 to rely upon failure of the prosecution
5 to establish such proof. A defendant may
6 also rely upon evidence brought out on
7 cross examination of witnesses for the
8 prosecution. The law does not impose
9 upon a defendant the duty of producing
10 any evidence. A reasonable doubt is such
11 a doubt as is based upon reason and as
12 appeals to your power of logic. It is
13 a doubt arising out of something tangible
14 in the evidence in the case or something
15 lacking in the case. If you feel un-
16 certain and not fully convinced that a
17 defendant is guilty of the crime charged
18 and you believe you are acting in a reason-
19 able manner and you believe a reasonable
20 man or woman in any matter of like import-
21 ance would hesitate to convict because of
22 such a doubt as you have that is a reason-
23 able doubt to the benefit of which a
24 defendant is entitled. If you have such
25 a doubt, then you must acquit the defendant.

1 You must also keep in mind in that
2 regard, however, that the law does not
3 require the prosecution to call all the
4 witnesses who may be available or present
5 or appear to have some knowledge of the
6 matters in issue in this trial and it does
7 not require them to produce all the
8 exhibits or papers or things mentioned in
9 the evidence. However, in judging the
10 credibility of the witnesses who have
11 testified and considering the weight and
12 the effect of all the evidence that has
13 been produced, you may consider the
14 prosecution's failure to call other
15 witnesses or to produce other evidence
16 shown by the evidence in the case to be
17 in existence and available, and further
18 in that regard, certainly the number of
19 witnesses called on either side of the
20 case does not make any difference. We
21 are concerned here with quality, not
22 quantity. As I have explained to you
23 before, the defendant is not obliged to
24 call any witnesses or offer any proof.
25 The burden remains upon the Government

1 to prove guilt beyond a reasonable doubt.

2 I just talked to you, ladies and
3 gentlemen, about the fact that it is not
4 necessary to call all the witnesses who
5 may be available, but you should keep in
6 mind that if you should find from the
7 evidence that if it is in a special
8 manner within the power of the prosecution
9 to produce a witness or an exhibit that
10 would be material to your consideration
11 on any issue in the case that the failure
12 to call that witness or produce that
13 exhibit may give rise to an inference that
14 the testimony would be unfavorable to the
15 prosecution. You should not arrive at
16 that conclusion, if you should find that
17 the testimony would be merely cumulative,
18 for example, if you are already satisfied
19 because of other evidence in the case
20 and it is only in a situation where you
21 would find that the material is material,
22 it is necessary for your consideration,
23 it is in a special manner within the
24 control of the Government and that the
25 evidence was not given to you.

1 When you go to deliberate, you
2 should not try to communicate with anyone
3 except through the marshal by a written
4 note to be delivered to the Court.

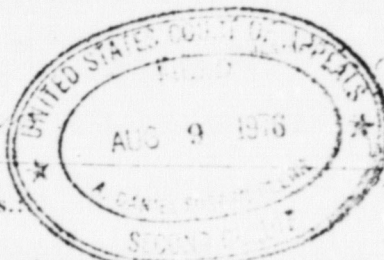
5 Your decision in this case, as I
6 have explained, must be by unanimous
7 verdict. It is helpful, usually, in your
8 deliberations to pick one of your number
9 as a foreman who can be your spokesman
10 if you do come into court. If you come
11 into court before arriving at a verdict
12 and you have some kind of a question, do
13 not tell me how you stand numerically
14 for or against guilt or innocence. Do
15 not tell me how you stand until you have
16 arrived at a unanimous verdict.

17 At this time, ladies and gentlemen,
18 I will ask you to step into the corridor
19 while I listen to any requests to charge
20 or any exceptions to the charge by either
21 side. Do you want to walk out to the side
22 with Mr. Hassett.

23
24 (Jury escorted from the courtroom.)
25

COURT

Origin State of Service

76-1216
AFFIDAVIT OF SERVICE
ON AN
INDIVIDUAL
OR
CORPORATION

Plaintiff,

Defendant.

STATE OF NEW YORK
COUNTY OF NEW YORK

James A. [unclear], being duly sworn, deposes and says: that he (she) is over 18 years of age, not a party to the action, and that he (she) served the annexed Summons Dear Mr. [unclear] Cherwell on the defendant U.S. Attorney named herein, in the following manner:

Complete one of the following BLOCKS, and the DESCRIPTION BELOW:

(1) ☒ by personally delivering to and leaving a true copy thereof with the above copied on the 26 day of June, 1976, at 1 AM/PM, at U.S. Court House, U.S. Court House, Court S. 1300 Ave. L. (address or place of service) and that he (she) knew the person so served to be the person described as the said defendant therein.

(2) ☐ A. by personally delivering to and leaving a true copy thereof with _____ (name of person served) a person of suitable age and discretion, on the _____ day of _____, 19____, at _____ AM/PM, at _____ (address or place of service) the dwelling place-usual place of abode-place of business within the State of New York
OR ☐ B. by affixing a true copy thereof to the defendant's door at _____ (address or place of service) the dwelling place-usual place of abode-place of business within the State of New York on _____ day of _____, 19____, at _____ AM/PM, AND by mailing a true copy of the same to the defendant(s) at _____ (address mailed to, street, No., City and State) his/her (their) last known residence or business address.
Deponent previously attempted to serve the defendant(s) with due diligence pursuant to CPLR Sec. 308 (3) on: (1) _____ day of _____, 19____, at _____ AM/PM; (2) _____ day of _____, 19____, at _____ AM/PM; (3) _____ day of _____, 19____, at _____ AM/PM.

(3) ☐ by personally delivering to and leaving a true copy thereof with _____ (name of person served) at _____ (address or place of service) on _____ day of _____, 19____, at _____ AM/PM; deponent knew the said corporation so served to be the corporation described in this action as the defendant therein, and that the said individual was the _____ (name of individual served) thereof.

The description of the person served pursuant to (1) or (2) above is: Sex _____; Skin color _____; Hair color _____; Approx. age _____; Approx. weight _____; Approx. height _____; Other identifying features _____

To my best knowledge, information and belief the said defendant at the time of service was not engaged in military service of the United States.

Sworn to before me, this 6 day of August, 1976

BEST COPY AVAILABLE